

GRANTING THE CONSENT OF CONGRESS TO THE
MISSOURI-NEBRASKA BOUNDARY COMPACT

SEPTEMBER 8, 1999.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GEKAS, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.J. Res. 54]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 54) granting the consent of Congress to the Missouri-Nebraska Boundary Compact, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

TABLE OF CONTENTS

	<i>Page</i>
Purpose and Summary	1
Background and Need for the Legislation	2
Hearings	3
Committee Consideration	3
Committee Oversight Findings	3
Committee on Government Reform Findings	3
Congressional Budget Office Cost Estimate	4
Constitutional Authority Statement	4
Section-by-Section Analysis	4

PURPOSE AND SUMMARY

House Joint Resolution 54 grants the consent of Congress to an interstate compact settling the boundary on the Missouri River between the states of Missouri and Nebraska. The resolution contains

the substance of the boundary agreement between the two states and makes it binding on them.

BACKGROUND AND NEED FOR THE LEGISLATION

As “‘most [state] boundaries are just a series of words on a piece of paper,’”¹ they are often the subject of legal disputes. Although the Supreme Court has original jurisdiction over such disputes,² interstate compacts have long been used as an alternative instrument to resolve border disputes between states.³ Since boundary changes affect the political power and influence of the states, interstate compacts effectuating them require Congressional consent under art. I, § 10, cl. 3 of the Constitution.⁴ Once the boundary line of a state is set, however, either by compact or otherwise, Congress is without power to change the line without that state’s consent.⁵

The boundary dispute between Missouri and Nebraska has a very long history. When Missouri and Nebraska were admitted into the Union in 1820 and 1867, respectively, the boundary between the states was set at the middle of the Missouri River.⁶ However, less than six months after Nebraska’s admission, on July 5, 1867, the Missouri River flooded and carved out a new path to the west.⁷ In the process, a 5,000 acre patch of land—known as McKissick’s Island—which was west of the river, suddenly became east of the river.⁸ The historical record demonstrates that the Missouri River was no stranger to such ambulation. While traveling through the same exact area in 1804, Lewis and Clark noted that a “channel from the bed of the Missouri once ran into [a small nearby river], and formed an island . . . but the channel is now filled up, and the island is added to the northern shore.”⁹

Finally, in 1904, the Supreme Court settled the dispute and held that McKissick’s Island was part of Nebraska.¹⁰ In reaching its decision, the Court relied on the common law distinction¹¹ between avulsion, “a sudden cutting off of land by flood, currents, or change in course of a body of water,”¹² and accretion, “the process of growth or enlargement by a gradual buildup: as [in] the increase of land by the action of natural forces.”¹³ In a case of avulsion, the boundary does not change, whereas in a case of accretion, the boundary moves with the river.¹⁴

Unfortunately, the Supreme Court decision did not end the dispute. In 1934, the Army Corps of Engineers began construction of

¹ Eric Johnson, *Border Disputes Linger in Many States: Families Have Lost Land Under Taxation Conflicts*, THE DALLAS MORNING NEWS, April 17, 1993, at 41A (quoting Stephen Pousardien, a map expert with the United States Geological Survey).

² U.S. CONST. art. III, § 2, cl. 1.

³ Felix Frankfurter and James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 YALE L. J. 685, 696 (1925). See also WILLIAM KEVIN VOIT, INTERSTATE COMPACTS & AGENCIES 19 (1998) (listing 25 interstate boundary compacts).

⁴ *Virginia v. Tennessee*, 148 U.S. 503, 518, 520 (1893).

⁵ *New Mexico v. Colorado*, 267 U.S. 30, 41 (1925); *Louisiana v. Mississippi*, 202 U.S. 1, 41 (1906).

⁶ Act of March 6, 1820, ch. 22, 3 Stat. 545; Act of February 9, 1867, ch. 59, 5 Stat. 34.

⁷ *Missouri v. Nebraska*, 196 U.S. 23, 33–35 (1904).

⁸ *Id.*

⁹ MERIWETHER LEWIS, THE JOURNALS OF THE EXPEDITION UNDER THE COMMAND OF CAPTS. LEWIS AND CLARK, (Nicholas Biddle, ed., The Easton Press 1989).

¹⁰ *Missouri*, 196 U.S. at 37–38.

¹¹ *Id.* at 35–36.

¹² WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 120 (9th ed. 1990).

¹³ *Id.* at 50.

¹⁴ *Missouri*, 196 U.S. at 36.

“dikes, revetments, ripraps, and dredging” which resulted in the Missouri River’s further movement along the border.¹⁵ Despite a 1982 decision by a United States District Court in Nebraska that the boundary remained at its pre-1934 location, the states were unable to agree on the precise location of that 1934 centerline.¹⁶ Consequently, farmers whose land is in the disputed area have faced taxation and threats of foreclosure from both states.¹⁷

After many years of negotiations and the appointment of an interstate commission, the boundary dispute has been resolved and the states have passed legislation embodying the commission’s recommendations and incorporating the Supreme Court’s decision.¹⁸ The final agreement shifts more than 10,000 acres of land on both sides of a 50 mile section of the river.¹⁹ That agreement, which also provides for a mechanism to govern future boundary disputes, is contained in H.J. Res. 54. Congress’ consent will make the agreement binding on both states.

HEARINGS

The Committee’s Subcommittee on Commercial and Administrative Law held a hearing on H.J. Res. 54 on July 29, 1999. Testimony was received from the Honorable Doug Bereuter of Nebraska, the Honorable Pat Danner of Missouri, and David Duncan, a member of the Missouri Boundary Commission.

COMMITTEE CONSIDERATION

On July 29, 1999, the Subcommittee on Commercial and Administrative Law met in open session and ordered reported the resolution H.J. Res. 54 by voice vote, a quorum being present. On August 2, 1999, the Committee met in open session and ordered reported favorably the resolution H.J. Res. 54 without amendment by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM FINDINGS

No findings or recommendations of the Committee on Government Reform were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

¹⁵ Letter from Hon. Doug Bereuter and Hon. Pat Danner to Hon. George W. Gekas 3 (June 25, 1999) (on file with the Committee) [hereinafter *Letter*].

¹⁶ *Id.*

¹⁷ Robin Tysver, *Truce Near in 131-Year Border War*, OKLAHOMA WORLD-HERALD, April 1, 1998, at 1.

¹⁸ *Letter*, *supra* note 15, *id.*

¹⁹ Tysver, *supra* note 17, at 1.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the resolution, H.J. Res. 54, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 5, 1999.

Hon. HENRY J. HYDE, *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 54, a joint resolution granting the consent of Congress to the Missouri-Nebraska Boundary Compact.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman, who can be reached at 226-2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

H.J. Res. 54—Granting consent of Congress to the Missouri-Nebraska Boundary Compact.

H.J. Res. 54 would give Congressional consent to the boundary change between Missouri and Nebraska. This compact would enable the two states to establish a compromise boundary without affecting private property rights or title to property. Enacting the resolution would result in no cost to the federal government. Because enactment of H.J. Res. 54 would not affect direct spending or receipts, pay-as-you-go procedures would not apply. The resolution contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Susanne S. Mehlman, who can be reached at 226-2860. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, section 10, clause 3 of the Constitution.

SECTION-BY-SECTION ANALYSIS

Section 1—Congressional Consent

Section 1 gives Congressional consent to the interstate compact between Missouri and Nebraska. The remaining portions of Section 1 set forth the Missouri-Nebraska Boundary Compact as substantially agreed to by the Missouri and Nebraska legislatures.

Article I—Findings and Purposes: Defines the purpose of the Compact which is principally to establish an identifiable compromise boundary between the states of Missouri and Nebraska.

Article II—Establishment of Boundary: Establishes the boundary at the center line of the main channel of the Missouri River, except for McKissick’s Island, which the Supreme Court determined to be in Nebraska.

Article III—Relinquishment of Sovereignty: Relinquishes any claims of sovereignty by each state over land on the opposite side of the agreed-upon boundary.

Article IV—Pending Litigation: Clarifies that the Compact does not affect pending litigation over the title to any of the land covered by the Compact.

Article V—Public Records: Confirms the continuing validity of legal documents in lands relinquished by each state.

Article VI—Taxes: Provides that the land covered by the Compact be taxed by only one state and imposes a five year statute of limitations for liens or other rights arising out of the imposition of taxes on such lands.

Article VII—Private Rights: Ensures that the Compact will affect neither the riparian rights of riparian owners nor any claims or rights of adverse possession. Additionally, the states agree not to assert claim of title to the riverbed, abandoned riverbed, or land along the river against previous owners.

Article VIII—Readjustment of Boundary by Negotiation: Pledges that if at any point the boundary line moves so that it is not within the river, both states will renegotiate the boundary with the stated intent to place the boundary within the river.

Article IX—Effective Date: Makes the Compact effective on the first day of January the year after it is ratified by the states and approved by Congress, so long as Nebraska ratifies the Compact by October 1, 1999 and the Congress approves within three years of Nebraska’s ratification.

Article X—Enforcement: Permits the states to seek enforcement of the Compact in court.

Article XI—Amendments: Provides that the Compact will remain in full force indefinitely unless amended by interstate compact.

Section 2—Right to Alter, Amend, or Repeal

Section 2 specifies that Congress reserves the right to alter, amend or repeal the Compact in the future.

Section 3—Construction and Severability

Section 3 mandates the liberal construction of the Compact’s terms and, in the event of an adverse ruling, makes the Compact severable.

Section 4—Inconsistency of Language

Section 4 ensures the validity of the Compact despite insubstantial differences in form or language.